IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.368 OF 2001

IN

WRIT PETITION NO.2391 OF 1998

Shri.Vasant Ganu Patekar. ...Appellant.

vs.

1.M/s.Permanent Magnets Ltd.
and another. ...Respondents.

Mr.P.M.Mokashi, for Appellant.

Mr.S.M.Naik with Shailesh More, for Respondent no.1.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 27th August,2007.

P.C.:-

1. By this appeal, the appellant challenges the order passed by the learned Single Judge dated 21st February, 2001 in Writ Petition no.2391 of 1998. By that order, the learned Single Judge

allowed the writ petition filed by the petitioner and set aside the order dated 28.10.1998 passed by the Industrial Court.

2. The relevant facts are that the appellant was in the employment of the respondent no.1. On 12.10.1997, a voluntary retirement scheme was introduced by the respondent no.1. Under that scheme the offers were to be made for voluntary retirement from 20.10.1997 to 19.11.1997. Admittedly, the appellant accepted the scheme and made the offer. That offer was accepted on 25.11.1997 by the respondent no.1 and he was told that he will stand relieved on 31.3.1998. In January,1998 the appellant wrote a letter requesting permission to withdraw his offer. The employer did not permit him to withdraw his offer, and retired him on 31.3.1998, therefore, the appellant approached the Industrial Court. The Industrial Court has held that the appellant was entitled to withdraw his offer even after it was accepted, and has directed that he will continue to be in service

till he reaches the age of superannuation. The writ petition was filed against that order. The learned Single Judge, however, has found that the employer has not committed any illegality in not permitting the appellant to withdraw his offer of voluntary retirement after it was accepted by the employer.

3. First challenge to the order on behalf of the appellant is that, according to him, even after his offer was accepted on 25.11.1997 he was entitled to withdraw the same. According to him, this submission was advanced before the learned Single Judge, but that was not considered by the learned Single Judge. In support of his submission, he relied on three judgments of the Supreme Court i.e. (i) in the case of “Balram Gupta Vs. Union of India & another, 1987(Supp) Supreme Court Cases 228”, (ii) in the case of “J.N.Srivastava Vs. Union of India & another, (1998)9 Supreme Court Cases 559, (iii) in the case of “Bank of India and others Vs. O.P.Swarnakar, 2003-I-LLJ 819”. So far as the

first two judgments of the Supreme Court are concerned viz. the judgment in the case of “Balram Gupta“ and the judgment in the case of “J.N.Srivastava”, in those judgments the Supreme Court has considered the case of the Government servant withdrawing his offer for voluntary retirement. The submission of offer for voluntary retirement, acceptance of that offer and actual voluntary retirement of a government servant are governed by the statutory rules. Perusal of both the judgments shows that in both the judgments the Supreme Court has considered specific rules governing the voluntary retirement. So far as the judgment of the Supreme Court in the case of “Bank of India” is concerned, it is clear from what the Supreme Court has stated in para.16 of that Judgment that the Supreme Court was considering in that case whether after making an application for voluntary retirement, an employee can withdraw it before it is accepted by the competent authority. In the present case, the application for withdrawal was made after the offer of voluntary retirement was accepted by the

employer. Therefore, the law laid down by the Supreme Court in that judgment will have to be read in the light of the facts that the Supreme Court was considering which they have stated in paragraph 16 of that judgment. It is clear from the observations of the Supreme in paragraph 18 of the judgment in the case of “Bank of India” that the Supreme Court has held that even though the case of the government servant may stand on a different footing because the service of a government servant is not a matter of contract but is a matter of status, still the case of the employee of a nationalised bank will also have to be seen from the angle that the banks are also bound by Article 14 and 21 of the Constitution of India. In so far as the present case is concerned, in the scheme of voluntary retirement, it was stated, in terms, that if the application is submitted it cannot be withdrawn. In our opinion, therefore, after the offer was accepted by the employer, it could not have been permitted to be withdrawn. In any case, we do not find that the above referred three judgments of the Supreme

Court lay down that an employee whose conditions of service in relation to retirement are not governed by the statute can withdraw his offer for voluntary retirement after the offer is accepted by the employer, merely because he has submitted his application for withdrawal before his date of actual retirement. The learned Counsel thereafter submits that the scheme of voluntary retirement amounts to illegal change. So far as that aspect of the matter is concerned, that aspect of the matter has been considered by the learned Single Judge in detail. We see no reasons to interfere with the findings recorded by the learned Single Judge on that aspect of the matter. In our opinion, considering the conduct of the appellant of voluntarily giving the offer for retirement, making the employer to accept that offer and thereafter, making an application for withdrawal of the offer, do not entitle the appellant to any relief which is in the discretion of this Court.

4. Taking overall view of the matter

therefore, in our opinion, as the judgment of the learned Single Judge cannot be said to have resulted in failure of justice, we can not interfere with the same. The appeal is disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA,J.)